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10 Attorneys for Defendant
11 NETFLIX, INC.

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14 BROADCOM CORPORATION, et al.,

15 Plaintiffs,

16 v.

17 NETFLIX, INC.,

18 Defendant.

Case No. 3:20-cv-04677-JD

NOTICE OF INSTITUTION OF *INTER PARTES* REVIEW ON THE '138 PATENT

Judge: Honorable James Donato

Trial Date: None Set

1 TO THE COURT AND ALL PARTIES AND COUNSEL OF RECORD:

2 Pursuant to the Court's June 3, 2021 Order, (Dkt. No. 123), Netflix hereby gives notice
3 that the Patent Trial and Appeal Board (the "Board") has instituted *inter partes* review ("IPR") of
4 the final 5 claims of U.S. Patent No. 8,572,138 (the "'138 patent"). The Board has now instituted
5 IPR on 7 of the 10 (70%) petitions filed by Netflix.
6

7 Attached hereto as **Exhibit A** is a true and correct copy of the Board's September 7, 2021
8 Decision Granting Institution of *Inter Partes* Review of U.S. Patent No. 8,572,138 B2 in
9 IPR2021-00542. The Board instituted IPR of claims 11, 12, 14, 22, and 24 of the '138 patent,
10 and, in combination with the previous institution decision on claims 1, 9, 16, 19, and 23 of the
11 '138 patent in IPR2020-01582, (see Dkt. No. 109-1, ¶ 9 & Ex. F), all 8 claims of the '138 patent
12 asserted by Broadcom are under IPR.
13

14 Moreover, 33 of 81 (41%) of the asserted claims and 5 of 12 (42%) of the asserted patents
15 in this litigation are now in IPR. In addition, Netflix's motion for reconsideration of the Board's
16 May 17, 2021 Decision Denying Institution of *Inter Partes* Review of U.S. Patent No. 8,365,183
17 B2 remains pending. If the Board were to grant the motion for reconsideration, 41 of 81 (51%) of
18 the asserted claims and 6 of 12 (50%) of the asserted patents would be in IPR.

19 Netflix's motion to dismiss under 35 U.S.C. § 101 is also pending. Should the Court grant
20 the motion, particularly as to the '079 and '245 patents, 2 patents with 11 asserted claims would
21 be eliminated from this case, leaving 33 of 70 (47%) of the remaining claims and 5 of 10 (50%)
22 of the remaining patents under IPR. If the motion to dismiss and the motion for reconsideration
23 are both granted, 41 of 70 (59%) of the asserted claims and 6 of 10 (60%) of the asserted patents
24 would be under IPR.
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Respectfully submitted,

Dated: September 7, 2021

KEKER, VAN NEST & PETERS LLP

By: /s/ Sharif E. Jacob

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